Supreme Court, U.S.
FILED

No. 98 788 NOV 5 1998

OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1998

CYNTHIA E. CANADY, *et al.*,

Petitioners,

vs.

ALLSTATE INSURANCE COMPANY, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the petition for certiorari should be granted to preserve the integrity of this Court's decisions in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979); and *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972)?

2. Whether the petition for certiorari should be granted to preserve the integrity of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*?

PARTIES TO THE PROCEEDINGS BELOW

Petitioners:

Cynthia E. Canady; Marva Jean Saunders; Mischelle A. Greer; Jimmy D. Hunt; Tamara A. Hunt; Kim Y. Nickerson; Esther E. Moten; Kerry L. Butler; Nadine Farris; Charles Lockridge; Coleman McClain; Evalin McClain; Alma Hammonds; John Hammonds; Sara Kenner; and Clarence Kenner.

Respondents:

Allstate Insurance Company; American Economy Insurance Company; American Family Mutual Insurance Company; American States Insurance Company; American States Preferred Insurance Company; Farm Bureau Town & Country Insurance Company; Farmers & Merchants Insurance Company; Farmers Insurance Exchange; Federal Insurance Company; Fire Insurance Exchange; Liberty Mutual Insurance Company; Mid-Century Insurance Company; Old Reliable Casualty Company; Pacific Indemnity Insurance Company; Prudential Property & Casualty Company; Safeco Insurance Company; Sea Insurance Company of America; Shelter General Insurance Company; Shelter Mutual Insurance Company; State Farm Fire & Casualty Company; State Farm General Insurance Company; Sun Insurance Office of America, Inc.; and Vigilant Insurance Company.

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STATEMENT OF JURISDICTION

The court of appeals entered an order denying the Petition for Rehearing and Suggestion for Rehearing En Banc on August 7, 1998 (App., *infra*, 1a). The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 804 of the Fair Housing Act as amended, 42 U.S.C. § 3604 (App., *infra*, 58a), provides that it is unlawful:

> (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
>
> (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

Section 813(a) of the Fair Housing Act as amended, 42 U.S.C. § 3613(a) (App., *infra*, 58a), provides that:

> (1)(A) An aggrieved person may commence a civil action in an appropriate United States district court

> or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

STATEMENT OF THE CASE

Petitioners are homeowners in minority areas of Kansas City, Missouri, and St. Louis, Missouri, who have asserted claims of discriminatory insurance "redlining" against each defendant insurance company. Redlining is a practice whereby insurance companies discriminate against homeowners in minority neighborhoods by refusing to sell them homeowners insurance on equal terms (or in many cases, at all) based upon the racial composition of their neighborhoods. Insurance redlining is a major problem in urban areas generally, and Missouri is no exception — the Missouri Department of Insurance has specifically concluded that "the big white insurers, by some conscious or unconscious stratagem, are redlining."

To remedy the injuries caused by redlining and to enjoin such redlining in the future, petitioners filed claims against each defendant company under Section 813 of the Fair Housing Act, 42 U.S.C. § 3613. Petitioners filed their claims both on behalf of themselves and a class of similarly situated minority homeowners. Petitioners asserted that each defendant company had discriminated against minority homeowners using a wide array of techniques, such as: (i) explicitly refusing to sell homeowners insurance at all within minority neighborhoods; (ii) steering agents away from minority neighborhoods; (iii) maintaining special underwriting and sales rules for

homeowners in minority neighborhoods; (iv) failing to establish and maintain offices or agents within minority neighborhoods; (v) steering minority homeowners into buying "limited" policies; (vi) charging higher rates in minority neighborhoods; and (vii) using underwriting guidelines designed to have a disparate impact on homeowners in minority neighborhoods, without any valid business justification. (Third Amended Complaint at ¶48, App., *infra*, 43a-45a).

Each petitioner established standing to sue companies with which he or she had not dealt directly by asserting that he or she had "suffered common damages in the form of a relative and/or absolute diminution in the value of their properties." *Id.* at ¶46 (App., *infra*, 43a). Petitioners explicitly claimed that they and every class member have "suffered these damages, whether they have ever personally dealt with the defendants or not, and regardless of their own personal experiences with homeowners insurance." *Id.*

Respondents immediately moved to dismiss based on lack of standing, arguing that not every petitioner had direct business dealings with every defendant insurer. Citing this Court's decisions in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979); and *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972), petitioners responded that they had standing to sue the insurance companies with which they had not dealt directly based upon a theory of indirect injury — *i.e.*, that the insurers' redlining practices lowered the property values of their homes located in minority neighborhoods.

Initially, the district court correctly held that petitioners' indirect injury claims should go forward. It recognized that "[p]laintiffs in this case . . . are those who are the most directly affected, economically and non-economically, by the alleged

redlining practices of all named defendants," and accordingly, "there are no persons better suited to make . . . challenges" to those practices. (App., *infra*, 27a).

After a short period of limited discovery, petitioners moved for class certification. The district court seized this opportunity to revisit the standing issue *sua sponte*, and it reversed its earlier decision regarding claims of indirect injury. It ruled that petitioners "lack standing to bring claims against defendants against whom they have alleged no direct injury." (App., *infra*, 20a). Based upon this sudden reversal in position, the district court dismissed all of petitioners' claims, including even the claims of those petitioners who had direct dealings with specific insurers. *Id.*

Petitioners promptly appealed the dismissal of their claims to the United States Court of Appeals for the Eighth Circuit, and challenged the ruling that they could not base their claims upon a theory of indirect injury. The Eighth Circuit adopted the district court's opinions and denied petitioners' appeal without further analysis. (App., *infra*, 2a).

REASONS FOR GRANTING THE WRIT

The district court's opinion (as adopted by the Eighth Circuit) conflicts directly with three prior opinions of this Court. Congress drafted the Fair Housing Act to allow suits to be brought by *all* persons affected by illegal discrimination, not just by the direct targets of such discrimination. This Court has therefore repeatedly held that standing under the Fair Housing Act extends as broadly as is permitted by Article III of the Constitution, and that a plaintiff asserting claims under the Fair Housing Act has standing to assert claims of indirect injury — *i.e.*, injury suffered as a result of discrimination directed at someone else. *See Havens Realty Corp. v. Coleman*, 455 U.S.

363, 372 (1982); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 109 (1979); *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 212 (1972).

The district court (and the Eighth Circuit) refused to follow this line of precedent, instead holding that petitioners "lack standing to bring claims against defendants against whom they have alleged no direct injury." The lower courts' defiance of such clearly established law directly threatens this Court's authority. In addition, the rulings threaten the enforcement structure carefully crafted by Congress for dealing with housing discrimination claims. If left uncorrected, the lower court rulings will affect not only the 93,000 homeowners seeking relief in this case, but also all other persons in the country victimized by redlining practices, as well as similar illegal practices such as steering or blockbusting. The Court therefore should exercise its supervisory powers, summarily vacate the lower court rulings, and remand this case for further proceedings consistent with the Court's holdings in *Havens*, *Gladstone, Realtors* and *Trafficante*.

I.

THE COURT HAS REPEATEDLY HELD THAT INDIRECT INJURY CLAIMS ARE FUNDAMENTAL TO THE ENFORCEMENT OF THE FAIR HOUSING ACT.

The lower courts' reading of the Fair Housing Act as allowing only claims based upon direct injury runs directly counter to three separate opinions of this Court. The lower court decisions should therefore be summarily vacated, and the case should be remanded for application of the law established by this Court.

A. The *Trafficante* Decision

This Court first considered the broad scope of the Fair Housing Act in *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972). *Trafficante* involved residents of a San Francisco apartment complex, both black and white, who filed suit based upon their landlord's discrimination against non-white rental applicants. *See id.* at 207-08. The Ninth Circuit Court of Appeals construed the Fair Housing Act narrowly, stating (as did the lower courts in this case) that the Act permits "complaints only by persons who are the objects of discriminatory housing practices." *Id.* at 208.

In a unanimous decision, this Court reversed the narrow construction advanced by the Ninth Circuit. The Court began by noting that the language of the Fair Housing Act "is broad and inclusive." *Id.* at 209. The Court further found that the statute's language evidenced "a congressional intention to define standing as broadly as is permitted by Article III of the Constitution." *Id.* The Court also relied on the Act's legislative history, which showed that:

> While members of minority groups were damaged the most from discrimination in housing practices, the proponents of the legislation emphasized that those who were not the direct objects of discrimination had an interest in ensuring fair housing, as they too suffered.

Id. at 210 (citing *Hearings before the Subcommittee on Housing & Urban Affairs of the Senate Committee on Banking & Currency on S. 1358, S. 2114, and S. 2280*, 90th Cong., 1st Sess. (1967)); *see also id.* at 211 ("[t]he person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, 'the whole community' ") (quoting 114 Cong. Rec. 2706).

Finally, the Court emphasized that "complaints by private persons are the primary method of obtaining compliance with the Act." *Id.* at 209. Because "HUD has no power of enforcement," the primary enforcers of the Fair Housing Act are "private attorneys general" whose task it is to "vindicat[e] a policy that Congress considered to be of the highest priority." *Id.* at 210-11. These private attorneys general necessarily include

> not only those against whom a discrimination is directed but also those whose complaint is that the manner of managing a housing project affects "the very quality of their daily lives."

Id. at 211 (quoting *Shannon v. United States Dept. of Housing & Urban Dev.*, 436 F.2d 809, 818 (3d Cir. 1970).

Based upon all of these considerations, the Court held that

> [w]e can give vitality to [the Fair Housing Act] only by a generous construction which gives standing to sue to all in the same housing unit who are injured by racial discrimination in the management of those facilities within the coverage of the statute.

Id. at 212. In other words, persons having suffered indirect injury as a result of illegal housing discrimination have standing under the Fair Housing Act to seek redress of such harm.

B. The *Gladstone, Realtors* Decision

The Court next addressed the issue of standing under the Fair Housing Act in *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979). That case involved a group of homeowners, as well as a municipality, which brought claims under the Fair

Housing Act to stop racial "steering" practices, whereby minority home buyers were shown homes only in certain areas. The homeowners claimed that as a result of these steering practices, the housing market in their town had been "wrongfully and illegally manipulated to [their] economic and social detriment . . . ." *Id.* at 95. The defendants argued that the plaintiff homeowners had no standing to sue because they had suffered only indirect injury. However, relying on *Trafficante*, this Court rejected that argument and upheld the homeowners' standing. *Id.* at 109-11.

In so holding, the Court emphasized the economic realities that underlie widespread patterns of housing discrimination:

> The adverse consequences attendant upon a "changing" neighborhood can be profound. If petitioners' steering practices significantly reduce the total number of buyers in the Bellwood housing market, prices may be deflected downward. This phenomenon would be exacerbated if perceptible increases in the minority population directly attributable to racial steering precipitate an exodus of white residents.

Id. at 110 (citing *Zuch v. Hussey*, 394 F. Supp. 1028, 1030, 1054 (E.D. Mich. 1975), *aff'd*, 547 F.2d 1168 (6th Cir. 1977); *Barrick Realty, Inc. v. City of Gary*, 354 F. Supp. 126, 135 (N.D. Ind. 1973), *aff'd*, 491 F.2d 161 (7th Cir. 1974); *United States v. Mitchell*, 335 F. Supp. 1004, 1005 (N.D. Ga. 1971), *aff'd*, 474 F.2d 115 (5th Cir.), *cert. denied*, 414 U.S. 826 (1973)). Every person owning a home in the affected area could feel the effects of such a wide-ranging pattern of discrimination — "[t]he most obvious source of [economic] harm would be an absolute or relative diminution in value of the individual respondents' homes." *Id.* at 115.

For these reasons, the Court held that "evidence that the economic value of one's own home has declined as a result of another certainly is sufficient under Art. III to allow standing to contest the legality of that conduct." *Id.* The Court also reaffirmed that the Fair Housing Act is not limited to claims of direct injury:

> [A]s long as the plaintiff suffers actual injury as a result of the defendant's conduct, he is permitted to prove that the rights of another were infringed. The central issue at this stage of the proceedings is not who possesses the legal rights protected by § 804, but whether respondents were genuinely injured by conduct that violates *someone's* § 804 rights. . . .

Id. at 103 n.9 (emphasis supplied). Thus, the Court allowed standing to every homeowner in the Village of Bellwood, which had an estimated population of 20,969. *See id.* at 114 n.27.

C. The *Havens* Decision

In *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), the Court yet again permitted indirect injury claims to be brought under the Fair Housing Act. The case, which involved claims of racial steering, was brought against a company that owned two apartment complexes in Richmond, Virginia. The plaintiffs claimed standing as residents of Richmond, who were damaged by any actions that tended to create segregated communities within that city.

This Court upheld the plaintiffs' standing to bring their claims. The Court once again reiterated that

> "Congress intended standing under § 812 to extend to the full limits of Art. III" and . . . the courts

> accordingly lack the authority to create prudential barriers to standing in suits brought under that section.

Id. at 372 (quoting *Gladstone, Realtors*, 441 U.S. at 103 n.9). Based upon this Congressional intent, the Court explicitly approved the concept of "neighborhood" standing, where "the injury asserted is an indirect one: an adverse impact on the neighborhood in which the plaintiff resides resulting from the steering of persons other than the plaintiff." *Id.* at 375; *see also id.* at 376 n.16 (" 'as long as the plaintiff suffers actual injury as a result of the defendant's conduct, he is permitted to prove that the rights of another were infringed' ").

II.

INTERVENTION IS NEEDED TO PRESERVE THE INTEGRITY OF THE COURT'S HOLDINGS IN *TRAFFICANTE, GLADSTONE, REALTORS* AND *HAVENS.*

Petitioners relied upon this Court's holdings in *Trafficante, Gladstone, Realtors* and *Havens* in drafting their pleadings. Following those cases, petitioners' Third Amended Complaint alleged that the defendant insurance companies, acting separately and together, have manipulated the market for homeowners insurance in such a way that persons owning property in minority neighborhoods in Missouri either cannot obtain coverage or can do so only on unfavorable terms. *See* Third Amended Complaint at ¶ 49-50 (App., *infra*, 45a-46a). Because insurance is a prerequisite for financing, such manipulation of the insurance market adversely affects the value of housing in these neighborhoods. As a result, petitioners alleged that they and the other homeowners in the affected areas have suffered both economic and non-economic injury at the hands of each defendant. *See id.* at ¶¶ 46, 50, 81, 84, 90 and 96

(economic loss alleged) (App., *infra*, 43a, 45a-46a, 51a, 52a, 53a, 54a); *id.* at ¶¶ 81, 85, 91 and 97 (non-economic loss alleged) (App., *infra*, 51a, 52a, 53a, 54a).

In particular, petitioners alleged that

> each plaintiff and class member has suffered common damages in the form of a relative and/or absolute diminution in the value of their properties. Each plaintiff and class member has suffered these damages, whether they have ever personally dealt with the defendants or not, and regardless of their own personal experiences with homeowners insurance.

Id. at ¶ 46 (App., *infra*, 43a).

These allegations were clearly sufficient to establish standing for petitioners under the Court's holdings in *Trafficante*, *Gladstone, Realtors* and *Havens*. As discussed above, the Court has recognized that "[t]he most obvious source" of economic injury to homeowners targeted for housing discrimination "would be an absolute or relative diminution in value" of their homes. *Gladstone, Realtors*, 441 U.S. at 115. Any discriminatory practice that "significantly reduce[s] the total number of buyers" in a housing market may deflect housing prices downward. *See id.* at 110. In such cases, "neighborhood" standing is appropriate, and all homeowners in the affected area may file an action to remedy such discriminatory practices. *See Havens*, 455 U.S. at 375.

Despite the conformance of petitioners' claims to this Court's previous holdings, the lower courts held that petitioners "lack standing to bring claims against defendants against whom they have alleged no direct injury," and therefore dismissed the claims (App., *infra*, 20a). This statement of law is clearly

wrong, and more importantly it threatens the authority of this Court by disregarding the Court's holdings in *Trafficante*, *Gladstone*, *Realtors* and *Havens*. The Court should exercise its supervisory powers, summarily vacate the lower court rulings, and remand this case for proceedings consistent with the Court's prior holdings.

III.

INTERVENTION IS NEEDED TO PRESERVE THE INTEGRITY OF THE FAIR HOUSING ACT.

As the Court emphasized in *Trafficante*, Congress has placed the primary responsibility for enforcing the Fair Housing Act into the hands of private plaintiffs, or "private attorneys general." *See Trafficante*, 409 U.S. at 210-11. The lower court rulings, if allowed to stand, would eviscerate this carefully constructed statutory scheme by removing a major group of potential enforcers — persons who have suffered indirect injury as a result of discrimination directed at other persons.

In many cases of housing discrimination, including the present case, *no* persons have direct dealings with a particular discriminating entity. This case, for example, involves some defendants who make extraordinary efforts to avoid all dealing with homeowners in minority neighborhoods. They maintain no offices in minority areas; they do not advertise; and they maintain underwriting rules designed to discourage any possible applications from minority areas. One defendant refused to sell any policies at all in the City of St. Louis. Another will not sell insurance policies to anyone whose home is not worth at least $200,000. In minority neighborhoods of Kansas City and St. Louis, few (if any) homes meet that criteria. Therefore no one living in those neighborhoods applies for that insurance.

In this case, more than 93,000 homeowners are affected by defendants' illegal discrimination. Yet, under the direct injury requirement adopted by the lower courts, the companies can argue that not one of these 93,000 homeowners has standing to seek redress of that discrimination. The companies can make that argument precisely because their discrimination has been so effective that no one owning property in the affected areas has been able to have direct dealings with those insurers. Congress cannot and did not intend to allow such a result. It is therefore of vital importance for this Court to exercise its supervisory power to vacate the lower courts' rulings in order to maintain the integrity of the Fair Housing Act, both in Missouri and throughout the country.

CONCLUSION

The lower court rulings in this case directly contradict the holdings of three opinions issued by this Court. Moreover, if the lower court rulings are allowed to stand, the entire enforcement mechanism of the Fair Housing Act will be threatened, and 93,000 victims of illegal housing discrimination will be left without a remedy.

The Court should therefore grant the petition for writ of certiorari, summarily vacate the lower court rulings, and remand this case for further proceedings consistent with the Court's rulings in *Trafficante*, *Gladstone, Realtors* and *Havens*.

Respectfully submitted,

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APPENDIX

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT DENYING PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC DATED AUGUST 7, 1998

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 97-3075WMKC

Cynthia E. Canady, et al,

Appellants,

v.

Allstate Insurance Company, et al,

Appellees.

Order Denying Petition for Rehearing and Suggestion for Rehearing En Banc

The suggestion for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

August 7, 1998

Order Entered at the Direction of the Court:

s/ Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX B — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT FILED JULY 6, 1998

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 97-3075

Cynthia E. Canady; Marva Jean Saunders, individually and representing a class of similarly situated persons,

Plaintiffs - Appellants,

Coleman McClain, et al.,

Intervenor Plaintiffs - Appellants,

v.

Allstate Insurance Company, et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Western District of Missouri.

[UNPUBLISHED]

Submitted: February 9, 1998
Filed: July 6, 1998

Before McMILLIAN, WOLLMAN, and LOKEN, Circuit Judges.

Appendix B

PER CURIAM.

Named plaintiffs and others commenced this purported class action alleging that defendant insurance companies conspired to and did refuse to sell homeowners' insurance on equal terms to residents of predominantly minority neighborhoods in St. Louis and Kansas City, Missouri, thereby violating 42 U.S.C. §§ 1981, 1982, and 1985(3); the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*; and Missouri common law. The district court,[1] initially dismissed plaintiffs' § 1985(3) and common law conspiracy claims because the Complaint failed to allege facts suggesting "a meeting of the minds" among the insurers. After several months of discovery, the court ruled that, absent a viable claim of conspiracy, plaintiffs lack standing to sue defendants with whom they had no contact. The court denied plaintiffs' motion for class certification, concluding the proposed class — "all persons who have owned a home located in a zip code in the State of Missouri whose minority population was 50% or greater according to the 1990 Census" — was overbroad and did not meet Fed. R. Civ. P. 23(a)'s requirements of numerosity, commonality, typicality, and adequacy of class representatives because of the standing deficiencies. The court then dismissed the Complaint without prejudice.

On appeal, plaintiffs argue the district court erred in dismissing their various conspiracy claims, in ruling that they lack standing, and in denying their motion for class certification. We review the court's refusal to certify a class for abuse of discretion. *See Coleman v. Watt*, 40 F.3d 255, 259 (8th Cir. 1994). After careful review of the record, we affirm for the reasons stated in the district court's thorough opinions. *See* 8th

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1. The HONORABLE FERNANDO J. GAITAN, JR., United States District Judge for the Western District of Missouri.

Appendix B

Cir. R. 47B. Plaintiffs also seek leave to supplement their original conspiracy pleadings. However, plaintiffs did not give the district court all opportunity to consider this issue nor explain on appeal how they would amend to save their claims. *See Batra v. Board of Regents*, 79 F.3d 717, 722 (8th Cir. 1996).

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION DATED AND FILED JUNE 19, 1997

IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

Case No. 96-0174-CV-W-2

Cynthia E. Canady, et al.,

Plaintiffs,

v.

Allstate Insurance Co., et al.,

Defendants.

ORDER

Pending before the Court are plaintiffs' motion for class certification and plaintiffs' renewed motion to maintain this action as a class action.[1] In this insurance redlining action, plaintiffs claim violations of the Civil Rights Acts of 1866 and 1870, 42 U.S.C. §§ 1981 and 1982, and of the Fair Housing Act 42 U.S.C. 3601 *et seq*. *See* Third Amended Class Action Complaint. After three months of discovery pertaining to the class certification issue, plaintiffs renew their motion to maintain this action as a class action.

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1. Also pending are defendant Allstate Insurance Company's motion to sever and defendant Liberty Mutual Insurance Company's motion for partial summary judgment. See section IV of this order for the dispositions of these motions.

Appendix C

I. CLASS CERTIFICATION PREREQUISITES

The principal purpose of class certification is to conserve the resources of both the court and the parties by permitting an issue potentially affecting every class member to be litigated in an economical manner. *See General Telephone Co. of the Southwest v. Falcon*, 457 U.S. 147, 155 (1982). However, the implementation of a class action is an exception, rather than the general rule. *Id.* Plaintiffs bear the burden of proving that each of the requirements of class certification has been met. *Id.* at 162; *Trotter v. Klincar*, 748 F.2d 1177, 1184 (7th Cir. 1984).

In deciding whether to certify a class, the court is to make no determinations as to the merits of the case. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974). Instead of an inquiry into the merits, the focus is on whether the requirements of Rule 23 have been met. *See Doctor v. Seaboard Coast Line Ry. Co.*, 540 F.2d 699, 707 (4th Cir. 1976); *see also Blackie v. Barrack*, 524 F.2d 891, 901 n. 17 (9th Cir. 1975) ("While the court may not put the plaintiff to preliminary proof of his claim, [the court] does require sufficient information to form a reasonable judgment. Lacking that, the court may request the parties to supplement the pleadings with sufficient material to allow an informed judgment on each of the Rule's requirements."), *cert. denied*, 429 U.S. 816 (1976).

In order to qualify for certification, a potential class must meet all four prerequisites of Fed.R.Civ.P 23(a) and one of three Rule 23(b) requirements. The preliminary requirements for class certification under Fed.R.Civ.P 23(a) are: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims

or defenses of the class representatives are typical of the claims or defenses of other class members; and (4) the class members are able to protect the interest of the class fairly and adequately.

Unless all four requirements of Rule 23(a) are met, no class can be certified. Only if and when the court determines that these are all satisfied will the court need to determine whether one of the three prerequisite of Rule 23(b) has been met. Plaintiffs have expressed, in their motion for class certification, a desire for a bifurcated class action: a class certified under 23(b)(2) for the "liability phase" seeking injunctive relief and subsequently, if liability is found, a class (or classes) certified under 23(b)(3) for the "damage phase." *See* Plaintiffs' Amended Motion, p. 2.

Rule 23(b)(2) certification is warranted when injunctive relief is the primary relief sought, although monetary damages may also be recovered. The text of Rule 23(b)(2) provides for a class when:

> the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

Id.

On the other hand, Rule 23(b)(3) certification is warranted when the potential class shares common issues of law or fact and such common issues will predominate in the lawsuit. Rule 23(b)(3) requires the court to find that "a class action is superior to the other methods for the fair and efficient adjudication of

the controversy." *Id.* In deciding whether a class action would be the "superior" manner in which to proceed, the court must consider:

> (A) the interest of members of the class in individually controlling the prosecution or defends of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

Id.

II. ANALYSIS

Preliminarily, the court should examine the proposed class definition. Plaintiffs in this case seek to certify two classes: one for their Civil Rights claims and one for the Fair Housing Act claim. The only difference between these proposed classes is caused by the differing statutes of limitations applicable to the acts. The proposed class for the Civil Rights Acts claims is comprised of: "All persons who, at any time between February 14, 1991 and the date of trial, have owned a home located in a minority neighborhood in the State of Missouri." The proposed class for the Fair Housing Act claim is comprised of: "All persons who, at any time between February 14, 1994 and the date of trial, have owned a home located in a minority neighborhood in the State of Missouri." *See* Plaintiff's Motion p. 3.

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Plaintiffs' definition of "neighborhood" is overbroad. By plaintiffs' calculus, a neighborhood is defined by zip code boundaries. However, especially in urban areas, several distinct neighborhoods are often lumped together in one zip code. Historic homes and expensive neighborhoods are sometimes included the same minority zip codes as contain less economically desirable neighborhoods. For this and other reasons, some of the distinct neighborhoods within particular minority zip codes are not comprised primarily of minority-owned homes.

Plaintiffs make the bold assertion that they

> have . . . produced evidence showing that defendants' redlining practices have caused damage to every person owning a home in the affected minority neighborhoods, regardless of each person's individual experiences or ability to obtain insurance.

Plaintiffs' reply, p. 2. However, plaintiffs have actually not so proven. A class comprised of every predominantly minority zip code in Kansas City and St. Louis, Missouri, numbering at least 93,000 persons is not the "relatively compact neighborhood" envisioned by *Gladstone, Realtors v. Bellwood*, 441 U.S. 91, 114 (1979) and plaintiffs have not borne their burden of proving that every person living within a predominantly minority zip code has suffered injury in fact. *See South Suburban Housing Center v. Santefort Real Estate*, 658 F.Supp. 1450, 1456-57 (N.D.Ill. 1987). Because the court cannot accept plaintiffs' blanket contention that every member of the proposed broad class definition has allegedly suffered harm as a result of the defendants' wrongdoing, the court must find that the class definition is overbroad. *Midpeninsula Citizens*

for Fair Housing v. Acco Management Co., 168 F.R.D. 647, 649 (N.D.Ca. 1996).

Given that if the other requirements of Rule 23 were met, an amended class definition could be presented to the court, the court will still proceed to address the Rule 23(a) requirements.

1. Numerosity

To satisfy the numerosity requirement of Rule 23(a)(1), plaintiffs "must show only that joinder is impracticable through 'some evidence or reasonable estimate of the number of purported class members.' " *Linquist v. Bowen*, 633 F.Supp. 846, 858 (W.D.Mo. 1986) (quoting *Zeidman v. J. Ray McDermott & Co., Inc.*, 651 F.2d 1030, 1038 (5th Cir. 1981). "Impracticability does not mean impossibility, but only that the joinder of all members of the class would be difficult or inconvenient." *Jackson v. Rapps*, 132 F.R.D. 226, 230 (W.D.Mo. 1990).

Plaintiffs claim that the two proposed classes consist of at least 93,000 members. This figure was adopted from the United States Census Data. It allegedly represents the number of homeowners in the predominantly (defined as over fifty-percent) minority zip codes in St. Louis and Kansas City, Missouri. Generally when classes numbering in the hundreds or thousands have been proposed, "the impracticablilty of bringing all class members before the court has been obvious, and the Rule 23(a)(1) requirement has been easily met." 1 H. Newberg & A. Conte, *Newberg on Class Actions*, §§ 3.05 at 3-24 (3d ed. 1992). However, for the reasons discussed *infra* with regard to the typicality and commonality requirements,

joinder would not be impracticable in this case. Thus, the court finds that the numerosity requirement has not been met.

2. Commonality

Plaintiffs correctly cite the standard for analyzing the Rule 23(a)(2) criteria — only *one* common issue of law or fact must exist to satisfy the commonality requirement. Plaintiffs purport to identify several issues of fact and law which are common to the proposed plaintiff class. According to plaintiffs, commonality of factual issues include (1) statistical evidence of the dual market for homeowners insurance, (2) defendants' underwriting guidelines that affect the availability of homeowners insurance in minority neighborhoods, (3) minimum value requirements, (4) requirements regarding the relationship between market value and replacement cost (denying insurance to individuals when the relationship of the market value to the replacement cost exceeds a specific amount), (5) maximum age of dwelling requirements which allegedly exclude a substantially higher proportion of property in minority neighborhoods than in white neighborhoods, (6) use of credit reports which allegedly have a disproportionate impact on persons owning homes in minority neighborhoods and may be a surrogate for other prohibited factors such as race, (7) use of subjective terms such as "pride of ownership," "good morals," or "defect in character" relating to maintenance and personal characteristics of applicants, (8) defendants' pricing policies with respect to minority neighborhoods, (9) the effect of defendants' discriminatory practices on persons owning homes in minority neighborhoods and (10) the defenses that will be asserted by defendants to explain the dual market for homeowners insurance. The questions of law which plaintiffs allege to be common are plaintiffs' claims of disparate impact and disparate treatment.

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Notwithstanding plaintiffs' attempt to make a showing of commonality, the requirement of Rule 23(a)(2) is not met. Commonality exists only when the plaintiffs have allegedly been aggrieved by a single defendant or by several defendants acting in concert. *La Mer v. H&B Novelty & Loan Co.*, 489 F.2d 461 (9th Cir. 1973)(where plaintiff was injured by one pawnbroker and attempted to file class action against all pawnbrokers in state, class certification inappropriate). Plaintiffs cite no cases in which class certification was granted in a similar case where multiple unrelated defendants existed. For its proposition that "because of the inherent class-based nature of redlining claims, courts considering the issue of insurance redlining have granted class certification," plaintiffs cite *NAACP v. American Family Mutual Ins. Co.*, Civil No. 90-C-0759, Stipulation and Order (E.D. Wis. 1992) and *Toledo Fair Housing Center v. Nationwide Mut. Ins. Co.*, Case No. 93-1685, Opinion and Judgment Entry (Ct. C.P. Lucas County, Ohio, Jan 17, 1996). Plaintiffs' Suggestions, p. 2. However, neither case addresses the issue of multiple defendants in the class certification scheme. In *American Family*, only one defendant was sued and certification was ordered through a stipulation of the parties. In *Toledo Fair Housing Center*, a plaintiff class was certified against defendants Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company, defendants that were related through ownership by the same parent company.

Plaintiffs have not presented the court with any cases in which a plaintiff class was certified against an unrelated group of defendants in an insurance redlining case, nor is the court aware of any type of case in which a class action has been allowed to proceed against multiple unrelated defendants, absent a claim for conspiracy or evidence of joint action. Rather,

courts require some relationship between the defendants that stronger than simply engaging in the same business or being members of the same industry.

In *Hiatt v. County of Adams, Ohio*, 155 F.R.D 605, 608 (S.D.Ohio 1994) the court found that commonality existed with respect to prisoners challenging jail conditions because " 'the members of the class have allegedly been affected by a general policy of the defendant, and the general policy is the focus of the litigation.' " *Id.* (quoting *Sweet v. General Tire & Rubber Co.*, 74 F.R.D. 333, 335 (N.D.Ohio 1976).

In Central Wesleyan College, et al v. W.R. Grace & Co., et al, 143 F.R.D. 628 (D.S.C. 1992), a case involving asbestos, defendants insisted, just as the defendants in this case insist, that not all defendants have had contacts with all of the plaintiffs. That case was different than the present case in one principle regard: a conspiracy claim had been sufficiently alleged. Because of the existence of the conspiracy claim, the court conditionally certified the class. *Id*, at 636-37.

A well-supported conspiracy allegation prompted yet another district court to certify a class of plaintiffs in a securities fraud action against several defendants. *CV Reit, Inc. v. Levy*, 644 F.R.D. 690, 696 (S.D.Fla. 1992):

> The commonality requirement is satisfied where questions of law refer to standardized conduct by defendants toward members of the proposed class. . . . Factual distinctions that may exist are "far less important than the common issues bearing on the existence of a 'common scheme' of misrepresentations and omissions". *Id.* at 59. The

> gravamen of the Plaintiffs' complaint is that the Defendants engaged in a common course of conduct to conceal the true financial condition and business prospects of CV Reit, including the condition of the mortgage portfolio.

Id.

In re Computer Memories Securities Litigation is an example of a decision where a court found a juridical link even though the plaintiff class representative did not have claims against all the defendants. 1111 F.R.D. 675 (N.D.Ca. 1986). There, defendant underwriters were found to be juridically linked because the defendants entered into an agreement among themselves concerning the relevant underwriting and were thereby bound to a common course of conduct.

Although plaintiffs have alleged that some of the defendants in this case have adopted the underwriting guidelines of other defendant insurance companies, rather than creating their own, no agreement has been alleged binding the defendants to use particular underwriting guidelines or binding them to any other specific course of conduct. No independent legal relationship between defendants has been alleged which, if it existed, would justify class certification of plaintiffs' proposed class.

Angel Music, Inc. v. ABC Sports, Inc. is more analogous to the present case. 112 F.R.D. 70 (S.D.N.Y 1986). In that copyright infringement action, the court plaintiffs argued that members of the defendant class had engaged in a common violation of the Copyright Act. The Court rejected plaintiffs' argument that by engaging in a common violation, the

defendants actions were within the juridicial link exception to *La Mar*. Similarly, the Canady plaintiffs' assertion that Missouri insurance companies have redlined, even if true, cannot compel a class action where plaintiffs have no claims that they have been aggrieved by all defendants singularly or jointly.

Where different members of the proposed plaintiff class have allegedly suffered due to the illegality of one or more — but less than all — of the defendants, certification is not proper against such a class of unrelated defendants unless the complaint includes a count for conspiracy or joint action (such as a joint tort). 1 Newberg § 3.18. For this reason, the court cannot agree with plaintiffs' statement that

> [t]he experiences of an individual property owner in attempting to purchase insurance from a particular company are irrelevant to this analysis, because the damage is caused by the cumulative effect of defendants' policies on all persons owning homes within the affected neighborhoods.

Plaintiffs' suggestions, p. 27. No where in plaintiffs' complaint is concert of action or conspiracy alleged. Absent such an allegation, no class may be maintained against the defendants.

3. Typicality

Because the commonality requirement is not met, it logically follows that plaintiffs cannot meet the typicality requirement of Rule 23(a)(3) "Commonality and typicality are closely related and a finding of one generally compels a finding of the other." *Buycks-Roberson v. Citibank Fed. Sav. Bank*, 162 F.R.D. 322, 333 n. 13 (N.D.Ill. 1995)(citing 1 Newberg

§ 3.13). The typicality prerequisite requires a finding by the court that the claims or defenses of the class representatives are typical of the claims or defenses of the class. A finding of typicality will only follow if first the class members claims are, in fact, common; when the interests of the class members are not common, it is impossible that the interests of the named class members would be typical of those of the class.

The Ninth Circuit has stated the general rule as follows: "typicality is lacking when the representative plaintiffs' cause of action is against a defendant unrelated to the defendants against whom the cause of action of the members of the class lies." *La Mar*, 489 F.2d at 465. However, the court cited the following exception:

> [T]his position does not embrace situations in which all injuries are the result of a conspiracy or concerted schemes between the defendants at whose hands the class suffered injury. Nor is it intended to apply in instances in which all defendants are juridically related in a manner that suggests a single resolution of the dispute would be expeditious.

Id. at 466.

No juridical link can be said to exist between unrelated businesses simply because they engage in similar conduct. *Id.* at 470. A juridical link sufficient to justify class certification

> generally must stem from an independent legal relationship. Partnership, joint enterprise, control, conspiracy, and aiding and abetting all may serve as such a link, since they denote some form of

> activity or association on the part of the defendants that warrants imposition of joint liability against the group even though the plaintiff may have dealt primarily with a single member.

Akerman v. Oryx Communications, Inc., 609 F.Supp. 363, 375 (S.D.N.Y. 1984), *aff'd in pertinent part*, 810 F.2d 336 (2nd Cir.1987).

However, plaintiffs assert that typicality exists because "the named plaintiffs' interests are identical to, and their claims typical of, the interests and claims of the class members they seek to represent." Plaintiffs' Suggestions, p. 36. Essentially, the class representatives' claim will only be typical of the claims of the class if their claim and those of the class "arise from the same event or pattern or practice and are based on the same legal theory." *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984) *cert. denied*, 470 U.S. 1004 (1985). The events giving rise to the claims in this case are separate and distinct: each plaintiff's claim against one or several defendants is distinct; no pattern or practice has been sufficiently alleged. Hence, where there is no commonality, no typicality can be said to exist.

4. Adequacy of Class Representative

The focus of Rule 23(a)(4) is whether: (1) the class representatives have common interests with the members of the class; and (2) whether the class representatives will vigorously prosecute the interests of the class through qualified counsel." *Paxton v. Union National Bank*, 688 F.2d 552, 562-63 (8th Cir. 1982). "The appropriate test for determining whether the interests of the class representatives and other members of

the class are antagonistic is whether or not those interests may be deemed coextensive; a total identity of interests is not required." *In re Tetracycline Cases*, 107 F.R.D. 719, 730, (W.D.Mo. 1985). " 'Coextensiveness' has been defined to mean that the plaintiffs and the class representatives 'share common objectives and legal or factual positions.' " *Id.*

The court will not reach the issue of vigorous prosecution through qualified counsel because the first prong of the requirement is not met: the class members do not have interests common to the class. "If the plaintiffs fail to satisfy the typicality test, the plaintiffs will also not be adequate representatives[.]" 1 Newberg § 3.13. A class action is inappropriate when the named plaintiffs are attempting to "represent those having causes of action against other defendants against whom the plaintiff has no cause of action and from whose hands [they] suffered no injury." *La Mar*, 489 F.2d at 462.

5. Rule 23(a) Conclusion

Because the requirements of 23(a), Fed.R.Civ.P., have not been met, plaintiffs' proposed class cannot be certified. It is not necessary, therefore, to consider whether the additional requirement of 23(b) is met.

III. STANDING

In the early stage of this litigation, the court denied defendants' motion to dismiss on standing grounds, recognizing that an indirect injury is often sufficient to establish standing to sue if the injury is fairly traceable to the conduct of the defendants. Order dated October 10, 1996, p.4. When ruling a

motion to dismiss, the court must grant every reasonable inference to the plaintiffs. *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986). Dismissal of plaintiffs' case on standing grounds would have been premature at that stage because the class was not well-defined and class discovery had not yet taken place.

As litigation progresses, however, and the facts and basis of the litigation become apparent, reasonable inferences are no longer afforded and plaintiffs allegations must clearly indicate that standing is proper. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Although standing and class certification are separate and distinct issues, an unfavorable analysis by the court of the class certification issue, especially with regard to the typicality requirement of Rule 23(a)(3), often makes evident that standing is also lacking. 1 Newberg § 3.18. Scrutiny of the proposed class definition as well as the 23(a) factors leads the court to conclude that plaintiffs do not have standing to bring suit, as a group, against individual, unrelated insurance companies when no proposed representative plaintiff has alleged to have been aggrieved by all defendants, nor has any claim of joint action or conspiracy been brought by the complaint.

The court adopts the Ninth Circuit's reasoning in *La Mer:* While a plaintiff would have standing to represent a class of similarly situated persons who had allegedly suffered injury by the same defendant, that plaintiff would not, in the absence of an alleged conspiracy, have standing to represent a class of all persons similarly situated who have allegedly suffered injury at the hands of different defendants even if those defendants are members of the same industry and the legal violation is allegedly widespread. 489 F.2d at 464-65.

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Because plaintiffs lack standing to bring claims against defendants against whom they have alleged no direct injury, the Third Amended Class Action Complaint must be dismissed. However, dismissal is without prejudice; each plaintiff who chooses to do so may refile against the defendant or defendants with whom each plaintiff has alleged grievances. If plaintiffs, individually or jointly pursuing their causes of action against defendants, discover facts supporting a claim of conspiracy, they could seek to alter the course of the litigation at that time. *See Taliaferro v. State Council of Higher Education*, 372 F.Supp. 1378 (E.D.Va. 1974), *modified on reconsideration*, 388 F.Supp. 957 (E.D.Va. 1975).

IV. ORDER

Accordingly, it is hereby **ORDERED** that:

(1) plaintiffs' motion for class certification and plaintiffs' renewed motion to maintain this action as a class action is **DENIED;**

(2) defendant Allstate Insurance Company's motion to sever is dismissed as moot;

(3) defendant Liberty Mutual Insurance Company's motion for partial summary judgment is dismissed as moot; and

(4) this action is dismissed without prejudice for plaintiffs' failure to meet standing requirements.

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s/ Fernando J. Gaitan, Jr.
Fernando J. Gaitan, Jr.
United States District Judge

Dated: JUN 19 1997
Kansas City, Missouri

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION FILED OCTOBER 10, 1996

IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

Case No. 96-0174-CV-W-2

Cynthia Canady, et al.,

Plaintiffs,

vs.

Allstate Insurance Co., et al.,

Defendants.

ORDER

Pending before the Court are defendants' motions to dismiss plaintiffs' amended complaint on standing grounds.[1]

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1. Several defendants have additionally requested in their motions that certain named plaintiffs be dismissed as to that specific defendant for failure to comply with Fed. R. Civ. P. 8(a)(2), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." *Id.* Defendants contend the plaintiffs they name in their motions fail to comply with Rule 8(a) because their amended complaint does not state that the named plaintiffs were injured by the motioning defendant specifically. The Court has reviewed these arguments and is not persuaded the result warranted by this argument is different than the (Cont'd)

Defendants allege that plaintiffs fail to meet the requirements of standing with regard to the individual motioning defendants. Defendants suggest that because certain plaintiffs have not held or attempted to obtain insurance policies from the particular motioning defendants, those plaintiffs fail to state a claim against those defendants.[2]

I. GENERAL STANDING REQUIREMENTS

The U.S. Supreme Court has clearly defined the standing requirements under Article III. The concept of standing is necessary to ensure that federal courts only become involved in disputes if plaintiff has made out a "case or controversy" within the meaning of Article III. Standing requires that the "plaintiff himself has suffered "some threatened or actual injury resulting from the putatively illegal action." *Warth v. Seldin*,

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(Cont'd)
decision expressed in this Order. The Court is especially persuaded to reach this result by U.S. Supreme Court precedent, which states that the injury alleged need not be direct. Indirect injury provides a basis for the complaint so long as it is "fairly traceable to the defendants' acts or omissions." *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 261 (1977). Hence, these motions to dismiss individual plaintiffs pursuant to Fed. R. Civ. P. 8(a)(2) are ruled entirely by this Order although not discussed individually in the main text.

2. Most of the defendants have chosen to present their arguments by joining the Supplemental Suggestions submitted by Shelter Mutual Insurance Company and Shelter General Insurance Company. Those defendants who have instead submitted their own suggestions, however, (e.g., American Family Mutual Insurance Co., Truck Insurance Exchange, Mutual Insurance Co., Prudential Property and Casualty Insurance) espouse similar arguments and case law.

422 U.S. 490, 498 (1975) (citations omitted). "[A] litigant normally must assert an injury that is peculiar to himself or a distinct group of which he is a part, rather than one 'shared in substantially equal measure by all or a large class of citizens.' " *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979), *citing Warth*, 422 U.S. at 499. In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, the Court elaborated on the requirements of standing:

> The essence of the standing question, in its constitutional dimension, is "whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' (as) to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." (Citations omitted). The plaintiff must show that he himself is injured by the challenged action of the defendant. The injury may be indirect, *see United States v. SCRAP*, 412 U.S. 669, 688 (1973), but the complaint must indicate that the injury is indeed fairly traceable to the defendant's acts or omissions. (Citations omitted).

429 U.S. 252, 261 (1977). The Court further stated that "[i]t has long been clear that economic injury is not the only kind of injury that can support a plaintiff's standing." *Id.* at 562 (Citations omitted).

From the outset, it can be said that plaintiffs meet the burden of showing an injury fairly traceable to the defendants' acts or omissions. Plaintiffs have alleged that the defendant insurance companies, acting separately and in the aggregate, have effectively manipulated the market for homeowners

insurance in such a way that persons living in or desiring to live in minority neighborhoods in Missouri either cannot obtain coverage or can do so only on unfavorable terms. *See* Plaintiffs' First Amended Complaint (hereinafter, "Amended Complaint") at ¶¶ 44-45 ("Defendants' illegal underwriting and sales practices have resulted in a widespread unavailability of homeowners insurance in the Neighborhoods. Low-income neighborhoods that have predominantly white residents do not suffer from similar unavailability.") Plaintiffs have alleged that they have suffered both economic and non-economic injury as a result of this wrongful conduct. *See* Amended Complaint ¶¶ 72, 78, 84 ("As a result of Defendants' illegal discrimination, Plaintiffs and the members of the Class have suffered economic losses, including but not limited to excess premiums paid to Defendants."); ¶¶ 73, 79, 85 ("As a further result of Defendants' illegal discrimination, Plaintiffs and the members of the Class have suffered a loss of self esteem, humiliation, emotional distress and mental anguish.")

To defendants assertion that plaintiffs cannot bring their actions against defendants with whom they have had no direct dealings, plaintiffs cite *Fair Housing Council of Bergen County Inc. v. Eastern Bergen County Multiple Listing Service, Inc.*, a case in which plaintiffs were allowed to assert claims against "the entire real estate industry in Bergen." 422 F. Supp. 1071, 1074 (D.N.J. 1976). Plaintiffs maintain that "if all market actors contribute to the harm, then all may be joined to achieve a remedy." Plaintiffs' Suggestions, p. 9. The Court agrees with plaintiffs' contention and reminds defendants that the alleged injury need not be direct because indirect injury provides a basis for standing so long as it is fairly traceable to the defendants' acts or omissions. *Arlington Heights*, 429 U.S. at 261. This Court finds each plaintiff need not have instigated contact with

every named defendant in order to have been injured by that defendant.

II. STANDING WITH REGARD TO EACH INDIVIDUAL CLAIM

Having proven they meet the threshold requirements for standing, plaintiffs are now required to prove they meet the standing requirements for each claim they assert. Defendants' challenge plaintiffs' standing to bring conspiracy claims, claims under the Civil Rights Acts, and FHA claims. It is unnecessary to consider whether plaintiffs have standing to sue under § 1985(3) or civil conspiracy because this Court has previously ruled that they have failed to allege a conspiracy. *See* Order of this Court, October 2, 1996.

A. STANDING TO BRING CLAIMS UNDER THE CIVIL RIGHTS ACTS

To bring their cause of action under the Civil Rights Acts, plaintiffs must not only meet the standing requirements discussed above, e.g., that they suffered some injury in fact and have a personal stake in the outcome of the litigation, but must also satisfy "prudential" considerations. Prudential considerations are those used by courts to determine whether sound judgment dictates resolution of the dispute, keeping in mind the parameters of Article III.

In *Mackey v. Nationwide Insurance Co.*, a case where a black insurance agent attempted to challenge defendant insurance companies for alleged discriminatory insurance redlining practices,

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> [t]he plaintiff's alleged loss of commission income probably satisfies the constitutional requirement that a plaintiff have suffered some injury in fact and have a "personal stake" in the outcome of the litigation. This does not end the matter, however, for there are prudential limitations which enter into the equation in solving most problems of standing. Generally, a litigant is not permitted to assert the legal rights of others. The courts should not be called upon to decide questions of broad social import in cases in which no individual rights will be vindicated, and access to the federal courts should be limited to those litigants best suited to assert the claims. *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99-100 (1979). The persons best suited to challenge the redlining practice are those owners of homes and buildings who have been the direct victims of the alleged discriminatory practice.

724 F.2d 419, 421-422 (4th Cir. 1984). The plaintiff in *Mackey* was found not to have standing because as an insurance agent he was not directly affected by the alleged redlining practices and therefore he was not best suited to bring those claims. Plaintiffs in this case, however, *are* those who are the most directly affected, economically and non-economically, by the alleged redlining practices of all named defendants. Furthermore, there are no persons better suited to make such challenges, according to *Mackey*, than the homeowners who have been victims of such discriminatory practices. *Id.* Hence, we find that the plaintiffs in this case survive scrutiny, both under the general standing principles and the prudential considerations, for standing to bring Civil Rights Acts claims.

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B. STANDING TO BRING CLAIMS UNDER THE FAIR HOUSING ACT

The plaintiffs' burden of proving standing to bring claims under the Fair Housing Act (hereinafter, the "FHA") is less onerous than its burden of proving standing to bring Civil Rights Acts claims. Courts have said prudential considerations do not weigh in the analysis of standing under the FHA. "The normal prudential barriers to standing may not be set up as obstacles to the maintenance of actions under the Fair Housing Act." *Mackey*, 724 F.2d at 422-23 *citing Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372 (1983). Rather, "the sole requirement for standing to sue under [the FHA] is the Art. III minima of injury in fact: that the plaintiff allege that as a result of the defendant's action he has suffered 'a distinct and palpable injury.' " *Havens*, 455 U.S. at 371, *citing Warth*, 422 U.S. at 501.

Demonstrative of this less stringent standard for standing under FHA claims is *N.A.A.C.P. v. American Family Mut. Ins, Co.*, 978 F.2d 278 (7th Cir. 1992). In that case, defendant

> insists that there is no case or controversy within the meaning of Article III because none of the plaintiffs has been unable to buy a house. This is strictly a constitutional argument, for the definition of "aggrieved person" in Title VIII, 42 U.S.C. § 3602(i), eliminates any prudential barriers to adjudication. *Gladstone Realtors v. Bellwood*, 441 U.S. 91, 98-99 (1979); *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). Congress amended the statute in 1988 to authorize suit by anyone who "believes that [he] will be injured by a

> discriminatory housing practice that is about to occur", § 3602(i)(2), and unless this statute is unconstitutional several of the plaintiffs (and the NAACP itself, as an organization whose members include many black persons in the housing market) have standing.

American Family, 978 F.2d at 293.

In *Bellwood* and *Havens*, two decisions which considered standing issues with regard to FHA claims, the U.S. Supreme Court found plaintiffs to have standing by virtue of the area in which they lived. In *Bellwood*, the plaintiffs were "testers" who approached real estate brokerage firms pretended to be interested in buying a home in a certain area. The actual intent of the testers was not to purchase but rather to determine whether allegations that the firms engaged in racial "steering" were true. After plaintiffs satisfied themselves that racial steering was in fact occurring, they sued defendants alleging violations of the FHA. To the defendants' argument that plaintiffs lacked standing, the U.S. Supreme Court replied that plaintiffs had standing to assert FHA claims merely on the basis of their status as homeowners in the affected communities. *Bellwood,* 441 U.S. at 111-15. In *Havens*, also a case involving "testers, the Supreme Court held that the fact plaintiffs lived in the metropolitan area in question was enough to prove standing. *Havens*, 455 U.S. at 375-76.

The *Mackey* Court, which denied a black insurance agent standing under the Civil Rights Acts (discussed *supra*), decided that plaintiff *did*, however, have standing to challenge the alleged redlining practice under the Fair Housing Act. "The plaintiff has alleged an economic injury to himself, satisfying

the Article III requirement, and that is all that need be shown." *Mackey*, 724 F.2d at 423.

As previously discussed, the plaintiffs in this case have alleged both economic and non-economic injury in their Amended Complaint and they allege that they would not be injured in such a way but for the conduct of all defendants. "For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Warth*, 422 U.S. at 501. Taking plaintiffs' complaint as true, then, it is conceivable that plaintiffs were each individually damaged by each defendants discriminatory redlining practices.

V. ORDER

Accordingly, it is **ORDERED** that defendants' motions to dismiss plaintiffs' amended complaint on standing grounds is **DENIED.**

This Order disposes of a motion entitled Separate Defendant Truck Insurance Exchange's Motion to Dismiss for Lack of Standing (filed May 16, 1996) in its entirety.

This Order disposes of the following Orders in their entirety, having been ruled in part by this Order and in part by this Court's Order dated October 2, 1996:

1) Motion of Defendants Federal Insurance Company, Pacific Indemnity Insurance Company, Sun Alliance USA Group, and Vigilant Insurance Company to Dismiss Plaintiffs' First Amended Complaint (filed May 6, 1996);

2) Motion of Defendant Prudential Property and Casualty Insurance to Dismiss (filed May 6, 1996);

3) Motion of Defendants Shelter Mutual Insurance. Co. and Shelter General Insurance Co. To Dismiss Plaintiffs' First Amended Complaint Pursuant to Rule 12(b) (filed May 6, 1996);

4) Motion of Defendants American Economy Insurance Company, American States Insurance Company, and American States Preferred Insurance Company to Dismiss Plaintiffs' First Amended Complaint for Failure to State a Claim and For Lack of Standing (filed May 6, 1996).

5) Motion to Dismiss Plaintiffs' First Amended Complaint of Separate Defendant Old Reliable Casualty Company (filed May 6, 1996);

6) Motion of Defendant Liberty Mutual Insurance Company to Dismiss the First Amended Class Action Complaint (filed May 6, 1996);

7) Motion of Defendant American Family Mutual Insurance Company to Dismiss Amended Complaint (filed May 6, 1996);

8) Farm Bureau Town and Country Insurance Company of Missouri's Separate Motion to Dismiss of Defendant Farm Bureau Town and Country Insurance Company of Missouri (filed May 6, 1996);

Appendix D

It is further ordered that because there are no further dispositive motions pending, the stay of discovery is lifted and the parties shall proceed with discovery.

s/ Fernando J. Gaitan, jr.
Fernando J. Gaitan, Jr.
United States District Judge

Dated: OCT 10 1996
Kansas City, Missouri

APPENDIX E — THIRD AMENDED CLASS ACTION COMPLAINT

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

No. 96-0174-CV-W-2

CYNTHIA E. CANADY, MARVA JEAN SAUNDERS, MISCHELLE A. GREER, JIMMY D. HUNT, TAMARA A. HUNT, KIM Y. NICKERSON, ESTHER E. MOTEN, KERRY L. BUTLER, NADINE FARRIS, CHARLES LOCKRIDGE, COLEMAN MCCLAIN, EVALIN MCCLAIN, JOHN HAMMONDS, ALMA HAMMONDS, SARA KENNER, and CLARENCE KENNER, individually and/or on behalf of other persons similarly situated,

Plaintiffs,

vs.

ALLSTATE INSURANCE COMPANY, AMERICAN ECONOMY INSURANCE COMPANY, AMERICAN FAMILY MUTUAL INSURANCE COMPANY, AMERICAN STATES INSURANCE COMPANY, AMERICAN STATES PREFERRED INSURANCE COMPANY, FARM BUREAU TOWN & COUNTRY INSURANCE COMPANY, FARMERS & MERCHANTS INSURANCE COMPANY, FARMERS INSURANCE EXCHANGE, FEDERAL INSURANCE COMPANY, FIRE INSURANCE EXCHANGE, LIBERTY MUTUAL INSURANCE COMPANY, MID-CENTURY INSURANCE COMPANY, OLD RELIABLE CASUALTY COMPANY, PACIFIC INDEMNITY INSURANCE COMPANY, PRUDENTIAL PROPERTY AND CASUALTY

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COMPANY, SAFECO INSURANCE COMPANY, SEA INSURANCE COMPANY OF AMERICA, SHELTER GENERAL INSURANCE COMPANY, SHELTER MUTUAL INSURANCE COMPANY, STATE FARM FIRE AND CASUALTY COMPANY, STATE FARM GENERAL INSURANCE COMPANY, SUN INSURANCE OFFICE OF AMERICA, INC., and VIGILANT INSURANCE COMPANY,

Defendants.

THIRD AMENDED CLASS ACTION COMPLAINT

Plaintiffs, individually and/or on behalf of other persons similarly situated, file this their Third Amended Class Action Complaint against Defendants. In support of their Complaint, Plaintiffs allege and state as follows:

JURISDICTION AND VENUE

1. The claims asserted herein arise under the Fair Housing Act (Title VIII of the Civil Rights Act of 1968) (as amended), 42 U.S.C. § 3601 *et seq.*, and the Civil Rights Acts of 1866 and 1870, 42 U.S.C. §§ 1981 and 1982. The Court has jurisdiction over this controversy pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4), 42 U.S.C. § 3613(a)(1)(A), and 28 U.S.C. §§ 2201 and 2202.

2. The Court has jurisdiction over Defendants because the unlawful practices alleged in this Complaint were committed, in whole or in part, in Jackson County, Missouri, which lies within the Western District of Missouri. In addition, Defendants

each have minimum contacts with the Western District of Missouri and the State of Missouri.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the Western District of Missouri, and because each Defendant resides within the Western District of Missouri.

PARTIES

4. Plaintiff and Representative Plaintiff Cynthia E. Canady is a black citizen of the United States, residing in the City of Kansas City, Jackson County, Missouri.

5. Plaintiff and Representative Plaintiff Marva Jean Saunders is a black citizen of the United States, residing in the City of Kansas City, Jackson County, Missouri.

6. Plaintiff and Representative Mischelle A. Greer is a black citizen of the United States, residing in the City of Kansas City, Jackson County, Missouri.

7. Plaintiff and Representative Plaintiff Jimmy D. Hunt is a black citizen of the United States, residing in the City of Raytown, Jackson County, Missouri.

8. Plaintiff and Representative Plaintiff Tamara A. Hunt is a black citizen of the United States, residing in the City of Raytown, Jackson County, Missouri.

9. Plaintiff and Representative Plaintiff Kim Y. Nickerson is a black citizen of the United States, residing in the City of Kansas City, Jackson County, Missouri.

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10. Plaintiff Esther E. Moten is a black citizen of the United States, residing in the City of Kansas City, Jackson County, Missouri.

11. Plaintiff and Representative Plaintiff Kerry L. Butler is a black citizen of the United States, residing in the City of Kansas City, Jackson County, Missouri.

12. Plaintiff Nadine Farris is a black citizen of the United States, residing in the City of Kansas City, Jackson County, Missouri.

13. Plaintiff and Representative Plaintiff Charles Lockridge is a black citizen of the United States, residing in the City of St. Louis, Missouri.

14. Plaintiff and Representative Plaintiff Coleman McClain is a black citizen of the United States, residing in the City of Kansas City, Missouri.

15. Plaintiff and Representative Plaintiff Evalin McClain is a black citizen of the United States, residing in the City of Kansas City, Missouri.

16. Plaintiff John Hammonds is a black citizen of the United States, residing in the City of Kansas City, Missouri.

17. Plaintiff and Representative Plaintiff Alma Hammonds is a black citizen of the United States, residing in the City of Kansas City, Missouri.

18. Plaintiff and Representative Plaintiff Sara Kenner is a black citizen of the United States, residing in the City of Kansas City, Missouri.

19. Plaintiff and Representative Plaintiff Clarence Kenner is a black citizen of the United States, residing in the City of Kansas City, Missouri.

20. Defendant Allstate Insurance Company ("Allstate") is a corporation organized under the laws of the State of Illinois. Allstate transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

21. Defendant American Economy Insurance Company ("American Economy") is a corporation organized under the laws of the State of Indiana. American Economy transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

22. Defendant American Family Mutual Insurance Company ("American Family") is a corporation organized under the laws of the State of Wisconsin. American Family transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

23. Defendant American States Insurance Company ("American States") is a corporation organized under the laws of the State of Indiana. American States transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

24. Defendant American States Preferred Insurance Company ("American States Preferred") is a corporation organized under the laws of the State of Indiana. American States Preferred transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

25. Defendant Farm Bureau Town & Country Insurance Company ("Farm Bureau") is a corporation organized under the laws of the State of Missouri. Farm Bureau transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

26. Defendant Farmers & Merchants Insurance Company ("Farmers & Merchants") is a corporation organized under the laws of the State of Oklahoma. Farmers & Merchants transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

27. Defendant Farmers Insurance Exchange ("Farmers Exchange") is a corporation organized under the laws of the State of California. Farmers Exchange transacts business within the State of Missouri, and in particular sells homeonwers insurance within the State of Missouri.

28. Defendant Federal Insurance Company ("Federal") is a corporation organized under the laws of the State of Indiana. Federal transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

29. Defendant Fire Insurance Exchange ("Fire Exchange") is a corporation organized under the laws of the State of California. Fire Exchange transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

30. Defendant Liberty Mutual Insurance Company ("Liberty Mutual") is a corporation organized under the laws of the State of Massachusetts. Liberty Mutual transacts business

within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

31. Defendant Mid-Century Insurance Company ("Mid-Century") is a corporation organized under the laws of the State of California. Mid-Century transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

32. Defendant Old Reliable Casualty Company ("Old Reliable") is a corporation organized under the laws of the State of Arizona. Old Reliable transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

33. Defendant Pacific Indemnity Insurance Company ("Pacific") is a corporation organized under the laws of the State of California. Pacific transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

34. Defendant Prudential Property and Casualty Insurance Company ("Prudential") is a corporation organized under the laws of the State of New Jersey. Prudential transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

35. Defendant Safeco Insurance Company of America ("Safeco") is a corporation organized under the laws of the State of Washington. Safeco transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

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36. Defendants Sea Insurance Company of America ("Sea") is a successor in interest to Sun Alliance USA Group. Sea transacts business within the State of Missouri, and in particular sells or sold homeowners insurance within the State of Missouri.

37. Defendant Shelter Mutual Insurance Company ("Shelter Mutual") is a corporation organized under the laws of the State of Missouri. Shelter Mutual transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

38. Defendant Shelter General Insurance Company ("Shelter General") is a corporation organized under the laws of the State of Missouri. Shelter General transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

39. Defendant State Farm Fire and Casualty Company ("State Farm Fire") is a corporation organized under the laws of the State of Illinois. State Farm Fire transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

40. Defendant State Farm General Insurance Company ("State Farm General") is a corporation organized under the laws of the State of Illinois. State Farm General transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

41. Defendant Sun Insurance Office of America, Inc. ("Sun") is a successor in interest to Sun Alliance USA Group. Sun transacts business within the State of Missouri, and in

particular sells or sold homeowners insurance within the State of Missouri.

42. Defendant Vigilant Insurance Company ("Vigilant") is a corporation organized under the laws of the State of New York. Vigilant transacts business within the State of Missouri, and in particular sells homeowners insurance within the State of Missouri.

CLASS ACTION ALLEGATIONS

43. Representative Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23, on their behalf and on behalf of other persons similarly situated who have been damaged by Defendants' illegal insurance underwriting, pricing, marketing and sales practices. The Class includes all persons who have owned a home located in a zip code in the State of Missouri whose minority population was 50% or greater according to the 1990 Census ("Minority Neighborhoods").

44. This case is properly maintainable as a class action in that:

a. The Class for whose benefit this action is brought is so numerous that joinder of all members is impracticable. The total number of persons included in the Class is estimated to exceed 93,000.

b. The claims of Representative Plaintiffs are typical of those of the Class Members, in that Representative Plaintiffs and Class Members have sustained damages arising out of Defendants' course of conduct alleged herein, including Defendants'

violations of federal law. Representative Plaintiffs' individual experiences with Defendants present characteristic examples of the means by which Defendants discriminate against homeowners in Minority Neighborhoods.

c. Representative Plaintiffs will fairly and adequately protect the interests of the Class Members. Representative Plaintiffs know of no conflicts of interest between Class Members with regard to the issues raised in this case, and know of no interest that Class Members might have in controlling or maintaining separate actions. Representative Plaintiffs have retained counsel competent and experienced in class and civil rights litigation and intend to prosecute this action vigorously.

d. A class action is superior to other available methods for the fair and efficient adjudication of this matter.

45. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

46. There are questions of law and fact common to the Class. The central questions of fact herein are whether Defendants have engaged in underwriting, pricing, marketing and sales practices that prevent persons who own a home located in a Minority Neighborhood from purchasing homeowners insurance on the same terms and conditions as others. In

addition, each plaintiff and class member has suffered common damages in the form of a relative and/or absolute diminution in the value of their properties. Each plaintiff and class member has suffered these damages, whether they have ever personally dealt with the defendants or not, and regardless of their own personal experiences with homeowners insurance. The central questions of law herein are whether defendants' practices violate the Fair Housing Act and the Civil Rights Acts of 1866 and 1870. These common questions of law and fact predominate over any questions that may be unique to any individual.

FACTS

47. At all relevant times, Plaintiffs owned homes located in minority neighborhoods in the State of Missouri. At all relevant times, Representative Plaintiffs and Class Members owned homes located in Minority Neighborhoods.

48. At all relevant times, Defendants, individually and/or collectively, have engaged in a wide variety of illegal underwriting, pricing, marketing and sales practices that prevent persons who own a home and/or apply for homeowners insurance for a home located in minority neighborhoods including the Minority Neighborhoods from purchasing homeowners insurance on the same terms and conditions as others. Examples of such illegal practices include, but are not limited to, the following:

a. developing and maintaining marketing programs that steer agents toward neighborhoods that are considered "desirable" and away from minority neighborhoods including the Minority Neighborhoods;

b. maintaining special underwriting and sales rules for homeowners, applicants for homeowners insurance and/or properties located in minority neighborhoods including the Minority Neighborhoods that are not generally applicable to others;

c. maintaining underwriting guidelines, policies and practices that mandate denial of homeowners insurance based upon the age of property;

d. maintaining underwriting guidelines, policies and practices that mandate denial of homeowners insurance for homes below a minimum property value;

e. failing to establish and maintain offices or agents within minority neighborhoods including the Minority Neighborhoods;

f. refusing to sell homeowners insurance within minority neighborhoods including the Minority Neighborhoods;

g. steering persons who own homes and/or apply for homeowners insurance for homes located in minority neighborhoods including the Minority Neighborhoods toward buying "limited" policies rather than standard or comprehensive homeowners policies;

h. maintaining underwriting guidelines and practices that use credit history to deny coverage;

i. maintaining underwriting guidelines and practices that deny coverage to homeowners whose coverage was terminated by another company;

j. targeting minority neighborhoods including the Minority Neighborhoods for the sale of "limited" policies at excessive rates in order to take financial advantage of the illegal actions of others;

k. discouraging applicants from minority neighborhoods including the Minority Neighborhoods who contact their agencies from applying for insurance;

l. charging higher rates in minority neighborhoods including the Minority Neighborhoods than in others; and

m. canceling or refusing to renew policies held by homeowners in minority neighborhoods including the Minority Neighborhoods under circumstances in which others would not be canceled or refused renewal.

49. Defendants' illegal underwriting, pricing, marketing and sales practices have resulted in a widespread unavailability of standard or comprehensive homeowners insurance in minority neighborhoods including the Minority Neighborhoods.

50. Defendants' illegal underwriting, pricing, marketing and sales practices have further resulted in higher premiums for homeowners insurance policies being charged to persons owning homes in minority neighborhoods including the

Minority Neighborhoods than for persons living in other areas. These higher rates are charged despite the fact that persons living in minority neighborhoods including the Minority Neighborhoods have lower average loss histories than do persons living in other areas.

51. During the relevant time period, Ms. Canady obtained homeowners insurance from Farm Bureau. Farm Bureau did not offer Ms. Canady the opportunity to purchase her policies on the same terms and conditions as others because her homes are located in Minority Neighborhoods.

52. Farm Bureau systematically canceled and/or non-renewed Ms. Canady's policies. Farm Bureau canceled her policies because her homes are located in Minority Neighborhoods.

53. Thereafter, Ms. Canady obtained homeowners insurance policies from American Family and Farmers. American Family and Farmers did not offer Ms. Canady the opportunity to purchase her policies on the same terms and conditions as others because her homes are located in Minority Neighborhoods.

54. During the relevant time period, Ms. Saunders attempted to obtain a homeowners insurance policy from certain of the Defendants, but was refused. These Defendants refused to offer her a policy because her home is located in a Minority Neighborhood.

55. Ms. Saunders eventually obtained a homeowners insurance policy from American Family. American Family did not offer Ms. Saunders the opportunity to purchase her policy

on the same terms and conditions as others because her home is located in a Minority Neighborhood.

56. American Family quickly canceled Ms. Saunders' policy. American Family canceled her policy because her home is located in a Minority Neighborhood.

57. Thereafter, Ms. Saunders again attempted to obtain a homeowners insurance policy from certain of the Defendants, but was refused. These Defendants refused to offer her a policy because her home is located in a Minority Neighborhood.

58. During the relevant time period, Ms. Greer obtained homeowners insurance from State Farm. State Farm did not offer Ms. Greer the opportunity to purchase her policy on the same terms and conditions as others because her home is located in a Minority Neighborhood.

59. State Farm non-renewed Ms. Greer's policy. State Farm refused to renew her policy because her home is located in a Minority Neighborhood.

60. Thereafter, Ms. Greer attempted to obtain a homeowners insurance policy from certain of the Defendants, but was refused. These Defendants refused to offer her a policy because her home is located in a Minority Neighborhood.

61. During the relevant time period, Mr. and Mrs. Hunt obtained a homeowners insurance policy from Allstate. Allstate did not offer Mr. and Mrs. Hunt the opportunity to purchase their policy on the same terms and conditions as others because their home is located in a Minority Neighborhood.

62. Allstate non-renewed Mr. and Mrs. Hunt's policy. Allstate refused to renew their policy because their home is located in a Minority Neighborhood.

63. Thereafter, Mr. and Mrs. Hunt attempted to obtain a homeowners insurance policy from certain of the Defendants, but were refused. These Defendants refused to offer them a policy because their home is located in a Minority Neighborhood.

64. During the relevant time period, Ms. Nickerson attempted to obtain a homeowners insurance policy from certain of the Defendants, but was refused. These Defendants refused to offer her a policy because her home is located in a Minority Neighborhood.

65. During the relevant period, Ms. Moten obtained a homeowners' policy from Farmers. Farmers did not offer Ms. Moten the opportunity to purchase her policy on the same terms and conditions as others because her home is located in a minority neighborhood.

66. During the relevant time period, Mr. Butler obtained homeowners insurance from American Family and Farmers. American Family and Farmers did not offer Mr. Butler the opportunity to purchase his policies on the same terms and conditions as others because his homes are located in Minority Neighborhoods.

67. At one time, American Family refused to renew Mr. Butler's policy unless he purchased additional insurance. American Family refused to renew his policy unless he purchased additional insurance because his home is located in a Minority Neighborhood.

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68. During the relevant time period, Ms. Farris attempted to obtain a homeowners insurance policy from certain of the Defendants, but was refused. These Defendants refused to offer her a policy because her home is located in a Minority Neighborhood.

69. During the relevant time period, Mr. Lockridge obtained homeowners insurance from Allstate. Allstate did not offer Mr. Lockridge the opportunity to purchase his policy on the same terms and conditions as others because his home is located in the Neighborhoods.

70. Allstate refused to renew Mr. Lockridge's policy. Allstate refused to renew his policy because his home is located in a Minority Neighborhood.

71. During the relevant time period, the Reverend and Mrs. McClain attempted to obtain a homeowners insurance policy from certain of the Defendants, but were refused. These Defendants refused to offer them a policy because their home is located in a Minority Neighborhood.

72. The Reverend and Mrs. McClain eventually obtained a homeowners insurance policy from American Family. American Family did not offer the Reverend and Mrs. McClain the opportunity to purchase their policy on the same terms and conditions as others because their home is located in a Minority Neighborhood.

73. During the relevant time period, Mr. and Mrs. Hammonds obtained homeowners insurance from Prudential. Prudential did not offer Mr. and Mrs. Hammonds the opportunity to purchase their policy on the same terms and

conditions as others because their home is located in a Minority Neighborhood.

74. Prudential non-renewed Mr. and Mrs. Hammonds' policy. Prudential nonrenewed their policy because their home is located in a Minority Neighborhood.

75. Thereafter, Mr. and Mrs. Hammonds obtained homeowners insurance from Farmers. Farmers did not offer Mr. and Mrs. Hammonds the opportunity to purchase their policy on the same terms and conditions as others because their home is located in a Minority Neighborhood.

76. During the relevant time period, Mr. and Mrs. Kenner obtained homeowners insurance from Safeco. Safeco did not offer Mr. and Mrs. Kenner the opportunity to purchase their policy on the same terms and conditions as others because their home is located in a Minority Neighborhood.

77. Safeco canceled Mr. and Mrs. Kenner's policy. Safeco canceled their policy because their home is located in a Minority Neighborhood.

78. Mr. and Mrs. Kenner obtained homeowners insurance from Farmers Insurance Company. Farmers did not offer Mr. and Mrs. Kenner the opportunity to purchase their policy on the same terms and conditions as others because their home is located in a Minority Neighborhood.

79. Farmers canceled Mr. and Mrs. Kenner's policy. Farmers canceled their policy because their home is located in a Minority Neighborhood.

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80. As a result of Defendants' illegal underwriting, pricing, marketing and sales practices, Plaintiffs, Representative Plaintiffs and Class Members have been wrongfully denied the opportunity to purchase homeowners insurance on the same terms and conditions as others. This opportunity was denied on the basis of the racial composition of the neighborhoods of Plaintiffs, Representative Plaintiffs and Class Members.

81. As a further result of Defendants' illegal underwriting, pricing, marketing and sales practices, Plaintiffs, Representative and Class Members have suffered injuries including the relative and/or absolute diminution in value of their properties, the payment of excessive premiums, embarrassment, humiliation, emotional upset, losses not covered by insurance, and other compensable items of damage.

COUNT I
Fair Housing Act — 42 U.S.C. § 3601 et seq.

82. Plaintiffs and Representative Plaintiffs hereby adopt, reallege and incorporate by reference the allegations contained in Paragraphs I through 81.

83. At all times relevant to this Complaint, Defendants, either individually or collectively, have discriminated against Plaintiffs, Representative Plaintiffs and Class Members, based upon the racial composition of their neighborhoods, by offering them different and unfavorable terms and conditions with respect to the provision of homeowners insurance. Such discrimination violates Section 804(b) of the Fair Housing Act, 42 U.S.C. § 3604(b).

84. As a result of Defendants' illegal discrimination, Plaintiffs, Representative Plaintiffs and Class Members have suffered economic losses including, but not limited to, the relative and/or absolute diminution in value of their properties and excess premiums paid to Defendants.

85. As a further result of Defendants' illegal discrimination, Plaintiffs, Representative Plaintiffs and Class Members have suffered non-economic losses including, but not limited to, a loss of self-esteem, embarrassment, humiliation, emotional distress, mental anguish and a reduced quality of life.

86. Defendants engaged in these discriminatory practices with malice or with reckless indifference to the federally protected rights of Plaintiffs, Representative Plaintiffs and Class Members. Plaintiffs, Representative Plaintiffs and Class Members are therefore entitled to an award of punitive damages in an amount sufficient to punish Defendants or to deter Defendants and other companies from like conduct in the future.

87. Plaintiffs, Representative Plaintiffs and Class Members are entitled to recover from Defendants reasonable attorneys' fees and costs, as provided by Section 813(c)(2) of the Fair Housing Act, 42 U.S.C. § 3613(c)(2).

COUNT II
Civil Rights Act of 1870 — 42 U.S.C. § 1981

88. Plaintiffs hereby adopt, reallege and incorporate by reference the allegations contained in Paragraphs 1 through 87.

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89. At all times relevant to this Complaint, Defendants, either individually or collectively, have discriminated against Plaintiffs, Representative Plaintiffs and Class Members in the making of contracts of insurance, based upon the racial composition of their neighborhoods, by offering them different and unfavorable terms and conditions with respect to the provision of homeowners insurance, and by refusing to sell them such insurance. Such discrimination violates the Civil Rights Act of 1870, 42 U.S.C. § 1981.

90. As a result of Defendants' illegal discrimination, Plaintiffs, Representative Plaintiffs and Class Members have suffered economic losses including, but not limited to, the relative and/or absolute diminution in value of their properties and excess premiums paid to Defendants.

91. As a further result of Defendants' illegal discrimination, Plaintiffs, Representative Plaintiffs and Class Members have suffered non-economic losses including, but not limited to, a loss of self-esteem, embarrassment, humiliation, emotional distress, mental anguish and a reduced quality of life.

92. Defendants engaged in these discriminatory practices with malice or with reckless indifference to the federally protected rights of Plaintiffs, Representative Plaintiffs and Class Members. Plaintiffs, Representative Plaintiffs and Class Members are therefore entitled to an award of punitive damages in an amount sufficient to punish Defendants or to deter Defendants and other companies from like conduct in the future.

93. Plaintiffs, Representative Plaintiffs and Class Members are entitled to recover from Defendants reasonable attorneys' fees and costs, as provided by 42 U.S.C. § 1988.

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COUNT III
Civil Rights Act of 1866 — 42 U.S.C. § 1982

94. Plaintiffs hereby adopt, reallege and incorporate by reference the allegations contained in Paragraphs 1 through 93.

95. At all times relevant to this Complaint, Defendants, individually and collectively, have interfered with the ability of Plaintiffs, Representative Plaintiffs and Class Members to purchase, lease, sell, hold and convey real estate located in minority neighborhoods including the Minority Neighborhoods, based upon the racial composition of their neighborhoods, by offering them different and unfavorable terms and conditions with respect to the provision of homeowners insurance, and by refusing to sell them such insurance. Such discrimination violates the Civil Rights Act of 1866, 42 U.S.C. § 1982.

96. As a result of Defendants' illegal discrimination, Plaintiffs, Representative Plaintiffs and Class Members have suffered economic losses including, but not limited to, the relative and/or absolute diminution in value of their properties and excess premiums paid to Defendants.

97. As a further result of Defendants' illegal discrimination, Plaintiffs, Representative Plaintiffs and Class Members have suffered non-economic losses including, but not limited to, a loss of self-esteem, embarrassment, humiliation, emotional distress, mental anguish and a reduced quality of life.

98. Defendants engaged in these discriminatory practices with malice or with reckless indifference to the federally protected rights of Plaintiffs, Representative Plaintiffs and Class

Members. Plaintiffs, Representative Plaintiffs and Class Members are therefore entitled to an award of punitive damages in an amount sufficient to punish Defendants or to deter Defendants and other companies from like conduct in the future.

99. Plaintiffs, Representative Plaintiffs and Class Members are entitled to recover from Defendants reasonable attorneys' fees and costs, as provided by 42 U.S.C. § 1988.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and Representative Plaintiffs, individually and/or on behalf of other persons similarly situated, pray for the following relief:

a. That the Court declare that Defendants' conduct complained of herein violates the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, and the Civil Rights Acts of 1866 and 1870, 42 U.S.C. §§ 1981 and 1982;

b. That the Court permanently enjoin Defendants and their owners, officers, management personnel, employees, agents, attorneys, successors and assigns, and those acting in concert therewith, from any further conduct violating Plaintiffs' rights, or the rights of the Class Members, under the Fair Housing Act and the Civil Rights Acts of 1866 and 1870;

c. That the Plaintiffs and Class Members be awarded compensatory damages;

d. That the Plaintiffs and Class Members be awarded punitive damages;

e. That the Plaintiffs and Class Members be awarded their attorneys' fees and costs incurred in prosecuting this action; and

f. That the Plaintiffs and Class Members be awarded such additional and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs and Representative Plaintiffs, individually and/or on behalf of other persons similarly situated, hereby request a trial by jury on all counts of their Complaint.

Respectfully submitted,

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Appendix E

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APPENDIX F — RELEVANT STATUTES INVOLVED

42 U.S.C. § 3604

§ 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful —

> **(a)** To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
>
> **(b)** To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

* * *

42 U.S.C. § 3613

§ 3613. Enforcement by private persons

(a) Civil action

(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an

alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(2)

Supreme Court, U.S.
F I L E D
DEC 16 1998

No. 98-788

In The Supreme Court of the United States

October Term, 1998

CYNTHIA E. CANADY, *et al.*,
Petitioners,

v.

ALLSTATE INSURANCE COMPANY, *et al.*,
Respondents.

On Petition for Writ of Certiorari To The United States Court of Appeals for The Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Counsel of Record
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QUESTION PRESENTED

Whether dismissal without prejudice of a complaint against thirteen unrelated insurance company groups because of plaintiffs' failure, after discovery, to present sufficient evidence of indirect injury traceable to each company diminishes the integrity of the Court's decisions in *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972), *Gladstone, Realtors v. Bellwood*, 441 U.S. 91 (1979), and *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), or of the Fair Housing Act, 42 U.S.C. §3601 (1994), et seq.

PARTIES TO THE PROCEEDINGS BELOW AND RULE 29.6 STATEMENT

Petitioners:

Cynthia E. Canady; Marva Jean Saunders; Mischelle A. Greer; Jimmy D. Hunt; Tamara A. Hunt; Kim Y. Nickerson; Esther E. Moten; Kerry L. Butler; Nadine Farris; Charles Lockridge; Coleman McClain; Evalin McClain; Alma Hammonds; John Hammonds; Sara Kenner; and Clarence Kenner.

Respondents:

Allstate Insurance Company; American Family Mutual Insurance Company; American Economy Insurance Company; American States Insurance Company; American States Preferred Insurance Company; Federal Insurance Company; Pacific Indemnity Insurance Company; Vigilant Insurance Company; Sun Insurance Office of America, Inc.; Sea Insurance Company of America; Liberty Mutual Insurance Company; Farm Bureau Town & Country Insurance Company of Missouri; Farmers Insurance Exchange; Fire Insurance Exchange; Mid-Century Insurance Company; Farmers & Merchants Insurance Company; Prudential Property and Casualty Insurance Company; Safeco Insurance Company; Shelter Mutual Insurance Company; Shelter General Insurance Company; State Farm Fire and Casualty Company; State Farm General Insurance Company; and Old Reliable Casualty Company.

This Brief in Opposition is being filed on behalf of the following respondents: Farmers Insurance Exchange, Fire Insurance Exchange, Mid-Century Insurance Company, American Family Mutual Insurance Company, and Prudential Property and Casualty Insurance Company.

Mid-Century Insurance Company is owned by Truck Insurance Exchange, Fire Insurance Exchange and Farmers Insurance Exchange. Truck Insurance Exchange, Fire Insurance Exchange and Farmers Insurance Exchange are, in turn, owned by policyholders and managed by attorneys-in-fact, which are indirect subsidiaries of Zurich Financial Services. There are no nonwholly-owned subsidiaries of Mid-Century Insurance Company, Farmers Insurance Exchange or Fire Insurance Exchange.

American Family Mutual Insurance Company is a Wisconsin mutual insurance corporation owned by its policyholders. It does not have any nonwholly-owned subsidiaries or parent companies.

The Prudential Insurance Company of America is the parent company of Pruco, Inc. Pruco, Inc. is the parent company to Prudential Property and Casualty Insurance Company. Prudential Property and Casualty Insurance Company is the parent company to Prudential General Insurance Company, Prudential Commercial Insurance Company, Prudential Insurance Brokerage Inc., and Merastar Insurance Company. There are no nonwholly-owned subsidiaries of Prudential Property and Casualty Insurance Company.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. B) is unreported. The opinion of the district court (Pet. App. D) is unreported.

STATEMENT OF JURISDICTION

The court of appeals entered an order denying the Petition for Rehearing and Suggestion for Rehearing En Banc on August 7, 1998 (Pet. App. A). Petitioners invoked the jurisdiction of the Court under 28 U.S.C. § 1254(1) (1996).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the statutory provisions reproduced in the petition, Pet. at 1-2, this case involves Article III, Section 2 of the United States Constitution, which extends "[t]he judicial Power . . . to all Cases [and] . . . Controversies . . ."

STATEMENT OF THE CASE[1]

On February 14, 1996, petitioners filed a class action complaint in the United States District Court for the Western District of Missouri against thirteen unrelated groups of insurance companies ("insurance companies" or "companies"). They sought certification of two classes

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totaling approximately 93,000 homeowners residing in the "predominantly minority neighborhoods" of Kansas City and St. Louis. Petitioners defined the neighborhoods as those zip codes having a minority population of greater than fifty percent.

Petitioners alleged that the insurance companies discriminated by making homeowners insurance less available and less affordable in the "predominantly minority neighborhoods" than elsewhere.[2] Petitioners alleged that this discrimination violated: (i) sections 804(a), 804(b), and 813 of the Fair Housing Act (the "FHA") (42 U.S.C. §§3604(a)-(b), 3613 (1994); and (ii) sections 1981, 1982 and 1985(3) of the Civil Rights Acts (42 U.S.C. §§1981, 1982 and 1985(3) (1994)). They also asserted state law civil conspiracy claims against the insurance companies.

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The petition contains several inaccurate and misleading statements concerning the business practices of the insurance companies. For example, petitioners begin their Statement of the Case by alleging that "the Missouri Department of Insurance ("Department") has specifically concluded that 'the big white insurers . . . are redlining.'" Pet. Br., p. 2. In fact, the Department has reached no such conclusion, officially or otherwise, regarding the insurance companies' business practices. The internal Department memorandum from which petitioners quote does not purport to represent any official conclusions of the Department; it merely sets forth the unsupported, inaccurate allegations of a single Department employee, which an official representative of the Department has specifically repudiated. Dep. of Stephen Stark at 370-76. The petition also makes blanket generalizations regarding business practices allegedly employed by all of the insurance companies. Petitioners' attempt to portray certain inaccurately-described underwriting, marketing and sales practices as uniform among the insurance companies is wholly inconsistent with the record in this case.

On October 10, 1996, the district court dismissed the conspiracy claims, as well as the claim under section 804(a) of the FHA. On the same day, the district court denied the insurance companies' motions to dismiss the action for lack of standing. Pet. App. D, p. 30a. The court stated that the allegations of diminished property values could provide a basis for standing "so long as [such diminution in property values] is fairly traceable to [respondents'] acts or omissions." Pet. App. D., p. 25a. Since that ruling, petitioners have relied upon their allegations of a purported "indirect injury" arising from the alleged diminution of their property values for Article III standing to sue all of the companies in one action.

Pursuant to a negotiated discovery and briefing order, the parties conducted three months of discovery on class certification issues. The parties deposed more than fifty witnesses, including executives from most of the companies, all of the named plaintiffs, and twelve expert witnesses. The insurance companies produced extensive computerized data and tens of thousands of pages of documents. Following this discovery, petitioners moved for class certification, submitting three briefs and four volumes of appendix materials in support. The companies' opposition included seven volumes of appendix materials. After reviewing these evidentiary submissions, the district court denied class certification and dismissed the action for lack of standing. The dismissal was without prejudice. Pet. App. C, p. 20a.

The district court acknowledged its previous denial of the companies' motions to dismiss for lack of standing, and reiterated that "an indirect injury is often sufficient to establish standing to sue if the injury is fairly traceable to the conduct of the defendants." Pet. App. C, p. 18a. The court